



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

November 6, 1975

ATTORNEY GENERAL OPINION NO. 75- 421

Mr. James A. McCain
Commissioner of Labor
Department of Labor
401 Topeka Avenue
Topeka, Kansas 66603

Re: Employment Agencies--Licensure
Employment Agencies--Maintenance of an Office in
Kansas and Keeping Required Records therefore.

Synopsis: Any private employment agency, as that term is defined by K.S.A. 44-401, doing business in the state of Kansas must be licensed by the Kansas Department of Labor (as provided in K.S.A. 44-401) and shall not charge applicants for its services any fee exceeding the limit set out in K.S.A. 44-407.

* * *

Dear Commissioner McCain:

You have written this office requesting our opinion as to:

1. At what point does an employment agency become "of this state" in regard to doing business in Kansas and therefore subject to the provisions of K.S.A. 44-401, *et seq.*
2. What effect does K.S.A. 44-401 have on the requirement to establish an office in Kansas and the maintenance of proper records in Kansas as is specified in K.S.A. 44-406.

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K.S.A. 44-401 provides:

"No person, firm or corporation of this state shall open, operate and maintain an employment agency or office to furnish persons seeking to be engaged in manual labor, clerical, industrial, commercial or business pursuits, and to secure employment for such described persons or where a fee, commission or other consideration is charged to or exacted or received from applicants for employment, without first obtaining a license for the same from the state labor commissioner. The uniform fee for such license in cities of twenty thousand (20,000) inhabitants and over shall be twenty-five dollars (\$25) per annum. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts such employment agency. The license together with a copy of this act shall be posted in a conspicuous place in each and every employment agency."
[L. 1911, ch. 187, §1; R.S. 1923, 44-401; L. 1971, ch. 178, §1, April 15.]

There is ample authority to support legislation such as K.S.A. 44-401 *et seq.* as being a valid exercise of the state's police power. *Williams v. Fearr*, 179 U.S. 270, 45 L. Ed. 186, 21 S. Ct. 128 (1900); *Brazee v. Michigan*, 241 U.S. 340, 60 L. Ed. 1034, 36 S. Ct. 561 (1916); *Adams v. Tanner*, 244 U.S. 590, 61 L. Ed. 1336, 37 S. Ct. 662, (1917); *Ribnik v. McBride*, 277 U.S. 350, 72 L. Ed. 913, 48 S. Ct. 545 (1928); *Olsen v. Nebraska*, 313 U.S. 236, 85 L. Ed. 1305, 61 S. Ct. 862 (1941). The chief objective of such legislation is the regulation of employment and emigrant agencies in order to afford protection to applicants for employment against imposition, fraud, exploitation, immorality and the like. *Brazee v. Michigan*, *supra*; *Telex Corp. v. Balch*, 382 F.2d 211 (C.A. 8 Minn. 1967).

The authority for the Commissioner of Labor to enforce K.S.A. 44-481, *et seq.* is limited geographically to the state of Kansas as is generally the case of any state or local administrative officer or agency. *Markham v. Cornell*, 136 Kan. 884 at 886, 18 P.2d 158 (1933). *Morrell v. Ingle*, 23 Kan. 19 (1879). Therefore, only those persons, firms or corporations operating and maintaining an employment agency or office to furnish persons seeking to be engaged in manual labor, clerical, industrial, commercial, or business pursuits, and to secure employment for such described

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persons or where a fee, commission or other consideration is charged to or extracted or received from applicants for employment, engaging in such conduct within the territorial boundaries of the state of Kansas are subject to the provisions of K.S.A. 44-401 *et seq.* The phrase "of this state" contained in K.S.A. 44-401 *et seq.* would appear to be a mere reference by the Kansas Legislature to the territorial limitation on the applicability of the statute.

K.S.A. 44-406 provides:

"It shall be the duty of every licensed agency to keep a register in which shall be entered the name and address of every person who shall make application for employment, and the name and nature of employment wanted. Such register shall, at all reasonable hours be kept open to the inspection and examination of the state labor commissioner and his agents, deputies or assistants." [L. 1911, ch. 187, §6, R.S. 1923, 44-406; L. 1971, ch. 178, §2, April 15.]

The purpose of K.S.A. 44-406 is to provide the Department of Labor with a means of monitoring the conduct of the employment agency's business activities. Although there is no specific directive in the statute that such records be maintained in an office in the State of Kansas. To interpret the statute as meaning otherwise would be illogical in view of the territorial limitations on the Department's authority and would defeat the purpose of the Act.

To interpret the above statutes to have application only to those employment agencies having their principle place of business in Kansas would allow any person or persons desiring to circumvent the effect of K.S.A. 44-401 *et seq.* to simply establish an office outside the state, designating such office as his principle place of business and then carry on his business in Kansas immune from the safeguards of these statutes.

Certainly the legislature did not intend to allow the protection afforded by K.S.A. 44-401 *et seq.* to be so easily defeated. And such construction cannot be given as is stated in *Kansas Commission on Civil Rights v. City of Topeka Street Department*, 212 Kan. 398 at 402, 511 P.2d 253 (1973)

"As is true of any law, the prime objective in construing laws creating and empowering

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administrative agencies is to ascertain
and give effect to legislative intent."

It is the duty of the court and this office to interpret statutes designed to improve social conditions and promote the general welfare of the people of the state in such a way that the intention of the legislature may be carried out to the fullest extent. *Young v. Regents of the University of Kansas*, 89 Kan. 239, 124 P. 150 (1919).

In light of the above authority and after considering the purpose of statutes such as K.S.A. 44-401 *et seq.* it is my opinion that the physical location of any office or offices operated by any person, firm, or corporation engaging in the activities described in K.S.A. 44-401 is not determinative whether a license is required. Rather it is the location of the activities engaged in by such person, firm or corporation that is determinative. Therefore any person, firm, or corporation entering the State of Kansas for the purpose of engaging in any of the activities described in K.S.A. 44-401 must be licensed by the State Commissioner of Labor regardless of whether or not they have previously or intend in the future to establish an office in this state.

Further it is my opinion that every person, firm, or corporation engaged in the activities described in K.S.A. 44-401 must have a designated office in the State of Kansas wherein are kept the books and records required by K.S.A. 44-407.

Yours very truly



CURT T. SCHNEIDER
Attorney General

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